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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/759,898	01/16/2004	Fateme Sima Sariaslani	CL2035USNA	1246
23906	7590	05/25/2007	EXAMINER	
E I DU PONT DE NEMOURS AND COMPANY LEGAL PATENT RECORDS CENTER BARLEY MILL PLAZA 25/1128 4417 LANCASTER PIKE WILMINGTON, DE 19805			FRONDA, CHRISTIAN L	
			ART UNIT	PAPER NUMBER
			1652	
			MAIL DATE	DELIVERY MODE
			05/25/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/759,898	SARIASLANI ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Christian L. Fronda	1652	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 06 March 2007.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 2-8, 11 and 12 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 2-8, 11 and 12 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____.<br>_____  | 6) <input type="checkbox"/> Other: _____                          |

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## **DETAILED ACTION**

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 03/06/2007 has been entered.
2. Claims 2-8, 11, and 12 are pending in the instant application.
3. The rejection of claims 2-8, 11, and 12 under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement has been withdrawn in view of applicants' amendment to the claims filed 03/06/2007.

### *Claim Rejections - 35 U.S.C. § 112, 2nd Paragraph*

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:  
The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
5. Claim 2-8, 11, and 12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.  
The claims recite "increasing the resistance of a host cell to aromatic carboxylic acids". The term "increasing" is a relative term which renders the claim indefinite. The term "increasing" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably appraised of the scope of the invention.  
Amending the claims to recite that the host cell comprising the recited polynucleotides has increased resistance to aromatic carboxylic acids compared to an unmodified host cell may help in overcoming the rejection.

### *Claim Rejections - 35 U.S.C. § 112, 1st Paragraph*

6. The following is a quotation of the first paragraph of 35 U.S.C. 112:  
The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly

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connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

7. Claims 2-8, 11, and 12 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

As stated in the previous Office Action, gene elements which are not particularly described, including promoters, regulatory elements, and untranslated regions, are essential to the function of the claimed invention since the claims recite yhcP and yhcQ genes. The art indicates that the structure of genes with promoters, regulatory elements, and untranslated regions is empirically determined. Therefore, the structure of these elements which applicants considers as being essential to the function of the claim are not conventional in the art.

There is no known or disclosed correlation between the coding region of a polynucleotide encoding the efflux protein YhcP or YhcQ and the structure of the non-described promoter, regulatory elements, and untranslated regions of the yhcP gene or yhcQ gene, respectively.

In view of the above considerations, applicants have failed to sufficiently describe the claimed invention, in such full, clear, concise, and exact terms that a skilled artisan would recognize Applicants were in possession of any yhcP gene and any yhcQ gene. Amending the claims to recite an *E.coli* polynucleotide as set forth in SEQ ID NO: 2 and an *E.coli* polynucleotide as set forth in SEQ ID NO: 1 may help in overcoming the rejection.

### ***Conclusion***

8. No claims are allowed.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christian L Fronda whose telephone number is (571)272-0929. The examiner can normally be reached Monday-Friday between 9:00AM - 5:00PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ponnathapura N Achutamurthy can be reached on (571)272-0928. The fax phone number for the organization where this application or proceeding is assigned is (571)273-8300.

10. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished

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applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). CLF

*Tekchand Saidha*  
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PRIMARY EXAMINER